



General Assembly

Distr.: General
15 September 2016

Original: English

Seventy-first session

Item 134 of the provisional agenda*

Programme budget for the biennium 2016-2017

Report on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 70/248 A of 23 December 2015, by which the Assembly, inter alia, authorized the Secretary-General to enter into commitments in an amount not to exceed \$2,438,500 to supplement the voluntary financial resources of the Residual Special Court for Sierra Leone for the period from 1 January to 31 December 2016 as a bridging financing mechanism and requested him to report, during the main part of the seventy-first session of the Assembly, on the use of the commitment authority. The report addresses the use of the commitment authority and options for future financing arrangements for the Court and contains a request for a subvention of \$2,980,500 to enable the Court to continue to carry out its mandate in 2017.

* A/71/150.



I. Introduction

1. Following an exchange of letters between the Secretary-General and the President of the Security Council, in October and November 2015 (see S/2015/855 and S/2015/856), the Secretary-General requested the General Assembly for a subvention of \$6,034,800 for the biennium 2016-2017 for the Residual Special Court for Sierra Leone. Having considered the most recent report of the Secretary-General (A/70/565) and the report of the Advisory Committee on Administrative and Budgetary Questions thereon (A/70/7/Add.30), the Assembly, by its resolution 70/248 A, authorized the Secretary-General to enter into commitments, in an amount not to exceed \$2,438,500, to supplement the voluntary financial resources of the Court for the period from 1 January to 31 December 2016 as a bridging financing mechanism and requested the Secretary-General to report on the use of the commitment authority during the main part of its seventy-first session. By the same resolution, the Assembly endorsed the conclusions and recommendations of the Advisory Committee, including the recommendation that the Assembly request that the Secretary-General develop alternative, sustainable options concerning the future financing arrangements for the Court and report to the Assembly. Accordingly, the present report addresses the use of the commitment authority granted for the Court for the period from 1 January 2016 to 31 December 2016 and reports on the result of Secretary-General's consultations with stakeholders to propose more comprehensive funding solutions for the Court. In the light of the projected financial situation of the Court, the report also requests a further subvention for the Court for the period from 1 January 2017 to 31 December 2017.

2. Pursuant to article 3 of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Residual Special Court for Sierra Leone, the expenses of the Court shall be borne by voluntary contributions from the international community. The parties and the Oversight Committee may explore alternative means of funding the Residual Special Court. This funding arrangement has posed serious challenges for the continued sustainability of the Court and the effective discharge of its functions. In his letter dated 14 October 2015 (S/2015/855), the Secretary-General informed the Security Council that there would not be sufficient voluntary contributions for the continuation of the Court's work beyond March 2016. The Secretary-General expressed his intention to propose to the General Assembly that the costs of the Court for the biennium 2016-2017 be provided through a subvention under the assessed programme budget. The Secretary-General indicated that the proposal would be a temporary measure to address the current financial situation and that he would consult closely with the Government of Sierra Leone, the Oversight Committee of the Court and associated stakeholders during the biennium in order to seek and propose more comprehensive solutions to the Council and the Assembly.

3. In his reply dated 10 November 2015 (S/2015/856), the President of the Security Council informed the Secretary-General that the Council members had taken note, with certain reservations, of the intention expressed in the letter of the Secretary-General on the understanding that the requested subvention would be on a one-time basis covering the proposed period and would be subsequently reimbursed from the voluntary contributions received by the Residual Special Court. He also stated that the Council members requested that the Secretariat, the Oversight

Committee and the Court intensify their efforts to lower costs and fund the activities of the Court through voluntary contributions.

4. By its resolution 70/248 A of 23 December 2015, the General Assembly endorsed the conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions (see A/70/7/Add.30) and authorized the Secretary-General to enter into commitments in an amount not to exceed \$2,438,500 to supplement the voluntary financial resources of the Residual Special Court for the period from 1 January 2016 to 31 December 2016 as a bridging financing mechanism.

5. The Residual Special Court expects that, out of the \$2,438,500 in commitment authority, an amount of \$1,444,400 would be utilized during the period from 1 January 2016 to 31 December 2016. Accordingly, the utilized portion of the commitment would be reported in the context of the first performance report on the programme budget for the biennium 2016-2017 for appropriation. At the time of the writing of the present report, there were no pledges or prospects for additional voluntary contributions; therefore the Court will not have sufficient funds from voluntary contributions to continue its operations in 2017, despite the continued efforts of the Secretary-General, the Government of Sierra Leone, key donors of the Court, including the States members of the Oversight Committee, and the principals of the Court to raise voluntary contributions. Therefore, the Court will require additional funding in the amount of \$2,980,500 for the period from 1 January to 31 December 2017.

6. Since any funding approved for 2017 would only be a temporary measure, there is still a need for a long term solution to the financial problems faced by the Residual Special Court. The Secretariat has engaged with the Government of Sierra Leone, the Oversight Committee of the Court, the Registrar of the Court and other stakeholders on alternative options for the future financing of the Court.

II. Historical background

7. The Residual Special Court was established by the Agreement between the United Nations and the Government of Sierra Leone in August 2010, with the concurrence of the Security Council. The mandate of the Court is to carry out a number of vital residual functions of the Special Court for Sierra Leone. The Special Court was established by an agreement concluded in 2002 pursuant to Council resolution 1315 (2000), in which the Council mandated the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court with the primary objective of prosecuting persons who bore the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law, committed within the territory of Sierra Leone. The Special Court indicted 13 individuals. Three indicted persons died and one remains at large. Nine individuals, including Charles Ghankay Taylor, former President of Liberia, were convicted and sentenced to terms of imprisonment ranging from 15 to 52 years.

8. On 31 December 2013, the Special Court became the first United Nations-assisted international criminal tribunal to successfully complete its mandate and to close: the residual functions of that body were passed on to the Residual Special Court. These important and ongoing functions include: the supervision of the enforcement of sentences; reviewing convictions and acquittals; conducting contempt of court proceedings or referring them to national jurisdictions; witness and victim protection and support; the maintenance, preservation and management of the archives of the Special Court and the archives of the Residual Special Court itself; responding to requests from national authorities for access to evidence and with respect to claims for compensation; providing defence counsel and legal aid for the conduct of proceedings before the Residual Special Court; and preventing double jeopardy by monitoring national proceedings. The Residual Special Court also has the power to prosecute the remaining fugitive, Johnny Paul Koroma, should he be alive and if his case is not referred to a competent national jurisdiction.

9. The Residual Special Court, which commenced operations on 1 January 2014, has an interim seat in The Hague, with a sub-office in Freetown for witness protection and support and the coordination of defence issues. The present arrangement will remain in effect until such time as the United Nations and the Government of Sierra Leone agree otherwise.

III. Progress to date

A. Structure and systems of the Residual Special Court for Sierra Leone

10. Since the commencement of the operations of the Residual Special Court on 1 January 2014, progress continues to be made to review and build on the necessary structures and systems for the proper functioning of the institution. The Residual Special Court is in the process of developing additional personnel policies to regulate internal administrative matters.

11. With regard to the legal and regulatory framework of the Residual Special Court for Sierra Leone, a headquarters agreement between the Netherlands and the Court was ratified by the Parliament of the Netherlands in December 2015. The agreement entered into force on 1 May 2016. Furthermore, in the first half of 2016, the Practice Direction on the Conditional Early Release of Persons convicted by the Special Court for Sierra Leone has been under review.

B. Activities of the Residual Special Court

12. Sadly, one of the judges of the Residual Special Court, Justice George Gelaga King, passed away on 5 April 2016 in London. Justice King was among the first group of judges to be appointed by the Government of Sierra Leone as a judge of the Appeals Chamber of the Special Court for Sierra Leone, and subsequently to the roster of judges of the Residual Special Court. The Government of Sierra Leone will appoint another judge to replace Justice King.

13. The Residual Special Court continues to successfully and efficiently carry out the residual functions of the Special Court for Sierra Leone, including: investigations and an administrative hearing concerning the violation of conditional early release; the management and preservation of archives and completion of archiving work from the Special Court of Sierra Leone; engaging with witnesses to address their needs; supervision of the enforcement of sentences; and responding to requests for information and evidence from national prosecuting authorities. The following section provides an overview of those activities.

1. Protection of victims and witnesses

14. Since Sierra Leone was declared free of the Ebola virus disease on 7 November 2015, albeit with the occurrence of two subsequent cases, the Witness and Victims Protection and Support Office has operated continuously throughout Sierra Leone and the subregion. Pursuant to article 18 of the statute of the Court, the Office continues to actively monitor and support over 100 witnesses and, through regular contact, maintains updated information on them. The Office is currently in the process of completing a comprehensive assessment of every witness, including psychosocial assessments and evaluations of their support and security needs. In recent months, the Office also assisted with investigations into the allegations of a breach of the conditions of conditional early release and consulted with witnesses to ensure that the protective conditions in place had not been violated.

2. Judicial and administrative proceedings

15. The Residual Special Court has, since its inception, held various judicial and administrative proceedings concerning the conditional early release applications of Moinina Fofana and Eric Koi Senessie, pursuant to rule 124 of the Court's Rules of Procedure and Evidence, including a motion filed by Mr. Taylor seeking an order for the enforcement of his sentence to be transferred to Rwanda, which was denied.

16. In March 2016, the Residual Special Court held an administrative hearing concerning Mr. Fofana's violation of his conditional early release agreement. Mr. Fofana, a former Director of War of the Civil Defence Forces during the armed conflict in Sierra Leone, was convicted of war crimes and crimes against humanity and sentenced to 15 years in prison, with credit for time served in custody since 2003. After having served two-thirds of his sentence in Rwanda, Mr. Fofana was granted early release on 11 August 2014, subject to certain conditions.

17. Following the fulfilment of conditions, Mr. Fofana was subsequently released in early 2015 to serve the remainder of his sentence in his community, under the supervision of the monitoring authority — that is, the Sierra Leone police. This was the first time that an international criminal tribunal has granted supervised conditional early release to a person convicted of war crimes.

18. In October 2015, the Residual Special Court received information regarding Mr. Fofana's alleged violation of the terms of his conditional early release. Following investigations by the Registry of the Court and the monitoring authority, the Registrar, in accordance with the Conditional Early Release Practice Direction, submitted a report to the President of the Court on 3 March 2016.

19. On 9 March 2016, the President issued an order for detention and transfer of Mr. Fofana to the custody of the Residual Special Court, and for a hearing pursuant to article 12 (F) of the Conditional Early Release Practice Direction. In the order, the President, *inter alia*, designated Justice Vivian M. Solomon to hear the matter pursuant to article 13(3) of the statute of the Court and ordered the Registrar to set a preliminary hearing of the matter within 7 days. Mr. Fofana surrendered himself to the monitoring authority and was transferred to the custody of the Court.

20. The hearings took place on 16 and 18 March 2016. Mr. Fofana confirmed the allegations, and Justice Solomon ordered his release from the custody of the Residual Special Court, with additional conditions.

21. On 25 April 2016, Justice Solomon issued a disposition ordering that Mr. Fofana be released subject to further stringent and modified conditions and that he undergo an intensive two-week training on the conditions. Mr. Fofana successfully completed the training, which was carried out by the Registry with the assistance of the Defence Office, on key elements of his conditional early release, international humanitarian law, human rights and the functions of the monitoring authority.

22. Justice Solomon expressed grave concern pertaining to the failures of the monitoring authority to abide by the monitoring agreement. In the light of those failures and pursuant to the disposition, the Registrar contacted the authority and entered into discussions regarding its failures and the manner in which the authority proposed to ensure future enforcement of the modified conditions. The authority agreed to undertake a number of measures to ensure adherence to its duties, including the participation of 13 Sierra Leone police officers in the training with Mr. Fofana.

23. Following the training, modified conditional early release and monitoring agreements were signed by Mr. Fofana and the monitoring authority, incorporating the modified conditions and their obligations pursuant to the disposition.

3. Supervision of enforcement of sentences

24. Pursuant to article 23 of its statute, the Residual Special Court has the responsibility to supervise the enforcement of sentences for persons convicted by the Special Court for Sierra Leone. Following the death of Alex Tamba Brima, who was convicted by the Special Court, the Residual Special Court currently has seven convicts in custody: one at Frankland Prison, in the United Kingdom of Great Britain and Northern Ireland; and six at Mpanga Prison, in Rwanda.

25. On 9 June 2016, the Government of Rwanda formally notified the Residual Special Court that Mr. Brima had died in Kigali on that date, after a serious illness. Mr. Brima had been a senior leader of the Armed Forces Revolutionary Council and had been serving a 50-year sentence for war crimes and crimes against humanity. He had been found guilty on 11 counts, including acts of terrorism, extermination, murder, rape and the use of child soldiers. The Court carried out an inquest concerning the circumstances surrounding his death and has closely coordinated with the Rwandan and Sierra Leonean authorities on various matters. An autopsy was carried out, and the final autopsy report is awaited.

26. The Registry and the Defence Office continue to maintain close contact with the authorities in Rwanda and the United Kingdom regarding the enforcement of sentences of the prisoners of the Special Court for Sierra Leone, including matters relating to family visits, the status of the prisoners, the provision of legal assistance and any other matters that arise requiring action by the respective organs. Pursuant to the agreement of the Rwandan authorities, family visits resumed in 2016, with the facilitation of the Residual Special Court. In January 2016, the Principal Defender and the Associate Defence Counsel travelled to the United Kingdom for meetings with Mr. Taylor and the Deputy Governor of Frankland Prison to address legal and other matters.

27. Independent monitoring authorities continue to carry out annual assessments on the enforcement of sentences of individuals convicted by the Special Court. On 3 February and 19 April 2016, the International Committee for the Red Cross conducted inspections at Mpanga Prison. Annual inspections have also been conducted at Frankland Prison by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

4. Assistance to national authorities and state cooperation

28. In keeping with the aspect of its mandate relating to the provision of assistance to national prosecuting authorities, the Residual Special Court has been receiving and responding to requests for assistance from them. To date, at least 13 such requests have received full responses through the Registry and the Prosecutor's Office, while work continues on follow-up issues on several further requests. Typically, the requests are for information on individuals accused of involvement in war-related crimes during the conflicts in Sierra Leone and Liberia and who now reside in the jurisdictions of the requesting authority pursuant to an asylum or other status. The Court has also received three requests for State cooperation in interviewing certain convicts, two of which have been fully dealt with during the present year. The Court provides full support to these countries, as per its mandate. In addition, the Registry and the Prosecutor's Office received and responded to requests for information or assistance from researchers engaged in academic and media projects.

5. Maintenance of archives and court management

29. The maintenance of the archives of the Special Court for Sierra Leone and the Residual Special Court is ongoing. Archivists continue to work to complete the archiving of all final Special Court documents and data and to establish a system that will enable the filing of Residual Special Court documents in real time and allow for a more efficient future file management system. Moreover, the process of archiving by identifying and correcting any gaps in the record is under way. To date, the physical archives of the Residual Special Court occupy approximately 580 linear metres of paper records, and the digital archives occupy approximately 13.4 terabytes.

30. The original archives are maintained at the Dutch National Archives in The Hague. Residual Special Court archivists have recently completed the compilation of a comprehensive index of all archives stored in The Hague, which is being verified by the Dutch National Archives. Upon finalization of the verification

process, the index will be annexed to the memorandum of understanding between the Ministry of Foreign Affairs of the Netherlands and the Residual Special Court on the conditions of storage and access to the Special Court's archives.

31. The Residual Special Court is currently upgrading its electronic records management software. This upgrade was prompted by technical difficulties experienced in the application of the older software and pursuant to the recommendation of an information technology specialist appointed to assist the archiving team in the identification of gaps in the archiving of the documents of the Special Court. The archiving team is consulting with the International Tribunal for the Former Yugoslavia and the International Residual Mechanism for Criminal Tribunals to draw from their experience in the upgrade process.

6. Plenary of judges

32. The second plenary of judges was held from 30 November to 4 December 2015 in The Hague. This was the first opportunity, after nearly two years of operations, for the Residual Special Court to review the rules and other procedures necessary for its functioning. The plenary deliberated on proposals for amendments to the Rules of Procedure and Evidence and amended rule 45 thereof. The plenary also deliberated on the drafts of the President's first (2014) and second (2015) annual reports on the operations of the Residual Special Court, which have since been published and submitted to the Secretary-General and the Government of Sierra Leone in accordance with article 26 of the statute of the Court. In addition, elections were held for the position of Vice-President and Staff and Deputy Staff Appeal Judges. The plenary was also presented with and approved the finalization of the jurisprudential legacy project of the Appeals Chamber, entitled "Bearing the greatest responsibility: select jurisprudence of the Special Court for Sierra Leone".

7. Legacy and outreach

33. The Special Court for Sierra Leone made a significant contribution to international criminal justice. Among other things, it was the first international criminal court in history to adjudicate cases on crimes relating to child soldiers, attacks on peacekeepers and forced marriage and to recognize forced marriage as a distinct crime against humanity. The preservation of the legacy of the Special Court is an important element of the work of the Residual Special Court, which also seeks to contribute to the development of international criminal justice. In this regard, the judges of the Court participate in activities to promote the legacy of the Special Court and increase the profile of the Residual Special Court. The judges do so at no cost to the Court, as they are remunerated only when they perform judicial functions for the Court at the request of the President, and these activities go above and beyond what is ordinarily expected of the judges. The judges' firm commitment to this cause and their desire to cement the legacy of the Special Court for Sierra Leone was discussed during the second plenary meeting of the judges.

34. Since the most recent report of the Secretary-General (A/70/565), such activities include: (a) the recent visit of Justice Renate Winter to Tajikistan, where she lectured on child rights in armed conflict, relying on the jurisprudence of the Special Court for Sierra Leone as best practice, and her discussions in the Committee on the Rights of the Child with the delegation of the Central African

Republic, relying on the jurisprudence of the Special Court, and with Bulgaria, Gabon, Georgia, Malawi, Nepal, Pakistan and the United Kingdom, concerning former child soldiers, child marriages and child terrorists; (b) the participation of Judge Philip Waki in a judicial dialogue at the African Court on Human and Peoples' Rights and discussions on the theme "Connecting national and international justice", drawing from the experience of the Special Court; (c) the key-note address by Justice Shireen Avis Fisher on the jurisprudence and structure of the Special Court and the future work of the Residual Special Court within the framework of combating impunity at the president's forum at Hobart and William Smith Colleges, in Geneva, United States of America, and her presentation of a paper highlighting the work of the Special Court at the plenary meeting of the twenty-fifth anniversary conference of the International Association of Women Judges, which was attended by 1,000 women judges from 82 countries; (d) the publication of a chapter on the Residual Special Court's Conditional Early Release Practice Direction, co-authored by Justice Fisher and Justice Teresa Anne Doherty, in the *Research Handbook on the International Penal System*; and (e) Justice Doherty's participation in a workshop in Tunis concerning war crimes and sexual violence in conflict, involving discussions on the Convention on the Rights of the Child and the jurisprudence of the Special Court.

35. In the same vein, and at no cost to the Residual Special Court, the Prosecutor continues to carry out activities pertaining to prosecutorial matters concerning the legacy of the Special Court for Sierra Leone and promoting the activities of the Residual Special Court. Such activities include the Prosecutor's attendance at a meeting of the Advisory Board of the International Nuremberg Principles Academy and her participation in a capacity-building initiative hosted in Botswana. The Prosecutor also undertook outreach missions in the south and east of Sierra Leone in 2016. The Prosecutor and Registrar recently participated in an outreach meeting with a civil society group, the Special Court Interactive Forum, in Freetown.

36. The jurisprudential legacy project of the Appeals Chamber is now in its final stage of completion. This will prove an invaluable tool to jurists, researchers and the public, enabling them to review the findings of the Special Court for Sierra Leone in one resource and to compare the Special Court's findings across multiple cases. As part of its launch campaign, the Residual Special Court will provide advance copies to preselected jurists, civil society organizations and scholars as a way to reach out to prospective future donors. It provides a momentous opportunity to increase awareness and the profile of the Residual Special Court.

IV. Current financial position and fundraising efforts

37. As indicated at the time of writing of the most recent report of the Secretary-General (A/70/565), the prevailing financial situation of the Residual Special Court was such that it would not be able to function beyond March 2016 without further voluntary contributions. The Court was only able to operate beyond March 2016 because of the subvention authorized by the General Assembly to supplement the voluntary financial contributions for the period from 1 January 2016 to 31 December 2016. During the first half of 2016, the Court received only €20,000 in voluntary contributions, and, despite ongoing and intensive fundraising efforts, at

this stage there are no prospects for additional voluntary contributions for the remainder of 2016 or for 2017. The current financial situation of the Court is therefore such that it will be unable to continue its work in 2017.

38. The resource requirements for the Residual Special Court amount to \$2,980,500. A breakdown of requirements by component and object of expenditure, and funding availability is provided in tables 1 and 2 below.

39. Information on the availability of funds and expenditure until 31 July 2016 is contained in annex I. Information on the distribution of resources between judicial and non-judicial functions is contained in annex II.

Table 1
Requirements by component and funding availability

(United States dollars)

Component	1 January- 31 December 2016 Estimated requirements	1 January- 31 July 2016 Actual expenditure	1 August- 31 December 2016 Projected expenditure	1 January- 31 December 2016 Estimated expenditure	2017 Estimated requirements
	a	b	c	d = (b + c)	e
Expenditure/requirements					
1 Chambers/judges/judicial	1 124 000	127 732	188 468	316 200	572 800
2 Office of the Prosecutor	60 000	33 733	26 267	60 000	66 200
3 Registry	2 412 300	1 263 450	947 550	2 211 000	2 341 500
Subtotal	3 596 300	1 424 915	1 162 285	2 587 200	2 980 500
Funds available					
Balance brought forward (1 January)				1 121 100	
Pledges and contributions				21 700	
Anticipated pledges				—	
Amount utilized out of the subvention of 2 438 500				1 444 400	
Subtotal				2 587 200	—
Surplus/(shortfall)				—	(2 980 500)

Table 2
Requirements by object of expenditure and funding availability
 (United States dollars)

<i>Component</i>	<i>1 January- 31 December 2016 Estimated requirements</i>	<i>1 January- 31 July 2016 Actual expenditure</i>	<i>1 August- 31 December 2016 Projected expenditure</i>	<i>1 January- 31 December 2016 Estimated expenditure</i>	<i>2017 Estimated requirements</i>
	<i>a</i>	<i>b</i>	<i>c</i>	<i>d = (b + c)</i>	<i>e</i>
Expenditure/requirements					
Posts	1 102 200	598 254	427 346	1 025 600	1 071 400
Common staff costs	786 300	90 536	134 504	225 040	403 300
Compensation to judges	218 900	32 900	41 700	74 600	183 000
Consultants and experts	31 500	8 480	23 020	31 500	31 500
Travel	352 100	106 972	75 738	182 710	290 100
Contractual services	581 000	294 013	213 987	508 000	591 000
General operating expenses		285 446	238 954	524 400	394 600
Supplies and materials		7 884	5 036	12 920	10 600
Acquisition of furniture and equipment		430	2 000	2 430	5 000
Subtotal	3 596 300	1 424 915	1 162 285	2 587 200	2 980 500
Funds available					
Balance brought forward (1 January)				1 121 100	
Pledges and contributions				21 700	
Anticipated pledges				—	
Amount utilized out of the subvention of 2 438 500				1 444 400	
Subtotal				2 587 200	—
Surplus/(shortfall)					— (2 980 500)

40. The proposed budget of the Residual Special Court is based on its experience over the past two and a half years of its operations. The Court will continue to carry out its functions at an interim seat in The Hague, with a sub-office in Sierra Leone to manage functions, including witness and victim support, defence issues and the coordination of matters related to persons convicted by the Special Court for Sierra Leone. The staff of the Residual Special Court will consist of a total of 13 full-time staff, to be based in those two locations.

41. The Residual Special Court office in The Hague will consist of six staff members: one D-2 Registrar; one P-4 Prosecution Legal Advisor; one P-4 Legal Officer in the Registrar's Office; one P-1 Associate Legal Officer; one P-2 Archiving Officer; and one P-2 Office Manager. In addition, one General Service position, funded by general temporary assistance, will provide archiving assistance.

The Residual Special Court sub-office in Freetown will consist of seven staff members: one P-4 Senior Legal Officer; one P-1 Associate Defence Legal Officer; three Witness Protection and Support Supervisors/Officers (National Professional Officers); one Administrative Assistant (Local level) and one Cleaner (Local level). The Residual Special Court will rely on short-term consultancies, expert services, interns and pro bono services to supplement its staff resources as and when necessary.

42. The estimated actual expenditure for 2016 is \$2,587,200, resulting in a balance of \$851,200, owing to the fact that the anticipated judicial proceedings for 2016, including the review of convictions, the variation of protective measures for witnesses, the conduct of contempt of court proceedings and conditional early release have not yet occurred. This is, in part, because of the sudden and tragic death of a defence counsel and the vigilant efforts of the Residual Special Court in managing its witness protection programme to guard against reprisals that would instigate contempt proceedings.

43. Notwithstanding the fact that judicial proceedings have not yet been held in 2016, based on the experience of the Residual Special Court, it is anticipated that they will be held in 2017.

44. In the light of the above, the estimated figures include resources for managing judicial and other proceedings to discharge the anticipated judicial mandate of the Residual Special Court for 2017, which will enable it to deal with any judicial matter falling within the requested resource level. The Court is a relatively new entity, still in the early stages of its operations, and its budgetary requirements have been determined and presented in that context. Therefore, the scope of judicial functions and the frequency of the exercise of these functions cannot be fully determined or anticipated. It is expected that the Court will evolve progressively as it continues to execute its mandate, establishing a pattern of activities and requirements. Additional resources will be required for any judicial matter requiring resources beyond the budgeted level for judicial activities. The assumptions also take into account the expenditure for 2016.

45. Annex III to the present report provides details on post requirements by category, level and location for 2017, inclusive of judicial functions, the President and the Prosecutor at the Under-Secretary-General level and the Principal Defender at the P-4 level.

V. Efficiency measures

46. The Residual Special Court remains committed to reducing costs and increasing efficiency. The Court's sub-office in Freetown is co-located with the National Witness Unit, and its interim seat in The Hague is co-located and continues to share an administrative and technical platform with the International Tribunal for the Former Yugoslavia.

47. The Registrar is the only senior full-time staff member of the Residual Special Court. The President, judges (called from the roster as and when needed), Prosecutor and Principal Defender all work remotely, only as necessary, and are remunerated on a pro rata basis. A total of 13 full-time staff members and 1 position

funded by general temporary assistance provide all of the required support services to the Court.

48. The Residual Special Court also relies on short-term contractors, pro bono assistance and interns to supplement its staff resources. In respect of the administrative hearing in the matter of Mr. Fofana's alleged violations of the terms of his conditional early release, the Court used short-term contractors and its staff rather than increasing staffing levels. The Court further negotiated the use of the national fast-track court in Freetown for the hearing, at no cost to the Court, and the use of that court's staff at a stipend. The Court has also retained the expert services of professionals, such as a press officer and a detention advisor, who will be called upon to work on an ad hoc basis only as necessary and will be remunerated on a pro rata basis. Further, upon request by the Oversight Committee, the Auditor-General of South Africa continues to conduct the annual audit of the Court on a pro bono basis. The next audit is due to take place in November 2016.

VI. Intensive fundraising efforts for 2016-2017

49. The Oversight Committee and the principals of the Residual Special Court have continued their fundraising efforts. The Court has adopted a proactive fundraising approach by seeking funds for the next three to five years, based on an annual budget of about \$3.5 million, while exploring alternative sources for long-term sustainable funding. The fundraising plan targets Member States and regional organizations, including the African Union and the European Union.

50. In an effort to secure funds for 2016 and 2017, letters were sent to Member States drawing their attention to the dire funding situation of the Residual Special Court and seeking their financial support. The Permanent Mission of Sierra Leone to the United Nations sent 80 notes verbales to non-African members of the Group of 77, and the Permanent Representative and Deputy Permanent Representative of Sierra Leone held bilateral meetings with Member States and regional groupings on this issue. In addition, in June 2016, the Secretary-General again sent letters of appeal to all Member States seeking their financial support for the Court. However, no voluntary contributions or pledges have been made thus far.

51. The principals of the Residual Special Court continue to engage in fundraising efforts. As of August 2016, the Court had held a total of 35 meetings to seek funding and provide briefings on its activities. The meetings were held with officials from the host countries, the Governments of Sierra Leone and of the Netherlands, and members of the diplomatic corps, including representatives of Australia, Brazil, Canada, Finland, Germany, India, Ireland, Italy, Japan, Liberia, Nigeria, South Africa, Switzerland, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America Uruguay and Venezuela (Bolivarian Republic of), as well as with the European Union delegation to Sierra Leone, civil society representatives and some United Nations agencies. The Court's principals intend to engage in another round of intense fundraising efforts during the second half of 2016 with members of the diplomatic corps in the host countries and to visit certain capitals to solicit funding from Member States.

52. The members of the Oversight Committee have been preoccupied with exploring options for the future financing of the Residual Special Court. They are committed to continuing to engage with Member States on the financial situation of the Court.

53. Despite these efforts, two rounds of appeals to all 193 Member States in 2015 and 2016 and more than 185 fundraising meetings held since the Residual Special Court commenced operations, the Court's financial situation remains dire, with no prospects for future voluntary contributions.

VII. Future financing arrangements for the Residual Special Court

54. The Secretary-General expressed concern about the future financing of the Residual Special Court in his previous report to the General Assembly (A/70/565). In its report on the request for the subvention (A/70/7/Add.30), the Advisory Committee on Administrative and Budgetary Questions recommended that the Assembly request the Secretary-General to develop alternative options concerning the future financing arrangements for the Court and to report on the use of the commitment authority and on the result of his consultations with stakeholders to propose more comprehensive funding solutions during the main part of its seventy-first session. That recommendation was endorsed by the Assembly in its resolution 70/248.

55. The alternative options for the future financial arrangements for the Residual Special Court that have been explored are: (a) funding from the Government of Sierra Leone; and (b) funding from the United Nations and the provision of administrative support to the Court by the International Residual Mechanism for Criminal Tribunals.

A. Funding from the Government of Sierra Leone

56. As one of the parties to the Agreement on the Residual Special Court, the Government of Sierra Leone could consider funding the Court. This could entail either the Government providing all the funding for the Court or providing funding for a portion of the costs while the rest is covered by other means.

57. The provision of funding from the Government of Sierra Leone to the Residual Special Court would enhance the sense of national ownership of the institution and would reduce or eliminate reliance on unpredictable voluntary contributions. Since, for practical and legal reasons, it might not be possible to transfer all of the functions of the Court to national authorities, it would remain an independent organization and would retain its international character even if it were funded by the Government. There are examples of United Nations-assisted tribunals that are funded in part by the Government of the State concerned while they remain fully independent in character and in their operations, for example the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia.

58. Following consultations with the Government of Sierra Leone, it became clear that the option of the Government funding the Residual Special Court was not viable. While the Government fully supports the work of the Court and appreciates the importance of its mandate and the need for its continued existence, the Government is not in a position to fund the Court and will not be in such a position in the near future. This is primarily because the Government has been constrained by the unfortunate circumstances of the Ebola virus disease that has afflicted the country in recent years, and the Government's priority is to help the country to recover from that crisis.

B. Funding from the United Nations and administrative support from the International Residual Mechanism for Criminal Tribunals

59. The second alternative option for the future financing of the Residual Special Court is the provision of funding from the United Nations, a matter that must be decided by the General Assembly, including the amount and form of the funding and to the length of time it should to continue to fund the Court.

60. Providing United Nations financial support to the Residual Special Court would be appropriate, given the very close and special link between the Court and the United Nations. The Court was established by an agreement between the United Nations and Sierra Leone, and both the Residual Special Court and its predecessor, the Special Court for Sierra Leone, derived their mandate from the Security Council (see resolution 1315 (2000) and S/2010/385). The Council supported the Special Court in various ways during the period of its operations, including by providing it with troops from the United Nations Mission in Liberia (UNMIL) for its security (see resolution 1626 (2005)), and by mandating UNMIL to arrest and transfer Mr. Taylor to the Special Court (see resolution 1638 (2005)). The Council also continued to offer strong support to the Special Court in the completion of its mandate and to the Residual Special Court as it commenced its functioning (see S/PRST/2012/21). For its part, the General Assembly has authorized the use of United Nations funding for the Special Court and the Residual Special Court on several occasions. The Assembly also recently affirmed the high priority accorded to the work of the Residual Special Court. Moreover, the activities of the Residual Special Court are carried out in furtherance of the purposes of the United Nations, in particular the maintenance of international peace and security, in conformity with the principles of justice and international law, and promoting and encouraging respect for human rights and fundamental freedoms.

61. In addition to securing a stable source of funding, it is essential to seek further cost reductions and efficiencies for the Residual Special Court, as evidenced in the request by members of the Security Council that the Secretariat, the Oversight Committee and Court officials intensify their efforts to lower the costs of the Court (see S/2015/856). A possible cost-reduction measure that has been explored is an arrangement whereby the Court's offices in The Hague would be co-located with the International Residual Mechanism for Criminal Tribunals and the latter would provide administrative support to the Court on a reimbursable basis. The arrangement would replicate the present situation whereby the Residual Special Court office in The Hague is co-located with, and receives administrative support on

a reimbursable basis from, the International Tribunal for the Former Yugoslavia. Since the Tribunal is expected to complete its work at the end of 2017, the Mechanism could assume the Tribunal's role as the service provider.

62. As with the arrangement with the International Tribunal for the Former Yugoslavia, the administrative support functions would include budget and finance, information and communications technology, general services, human resources services and procurement. The arrangement would be of a purely administrative nature and would not involve any change in the mandate or functions of the International Residual Mechanism for Criminal Tribunals. The provision of administrative services would be subject to the Mechanism's operational capacity and constraints and the renewal of the Mechanism's mandate. The Residual Special Court would retain its organs, principals and independent legal character and would be responsible for carrying out its own legal, judicial or quasi-judicial residual functions, including witness protection, the supervision of the enforcement of sentences, the review of judgments and sentences, contempt of court proceedings and the trial of the remaining fugitive.

1. Potential benefits

63. A financing arrangement involving United Nations funding for the Residual Special Court and the provision by the International Residual Mechanism for Criminal Tribunals of administrative support would have significant benefits. Funding from the United Nations would place the Court on a secure and stable financial footing and would enable senior officials of the Court to focus on its substantive functions instead of on fundraising. The administrative support and co-location arrangement with the Mechanism would result in substantial cost savings from economies of scale, as compared with a stand-alone Court.

64. While the cost savings would be a significant benefit, they are not the only factor in support of the shared administrative platform. Given the similarity in the respective functions and mandates of the Residual Special Court and the International Residual Mechanism for Criminal Tribunals, a shared administrative platform would be sensible from an operational and organizational efficiency perspective. It would enhance synergies of practice and experience between residual mechanisms, with the possibility for further rationalization of functions, which could result in even greater efficiencies and savings.

2. Consultations

65. There have been extensive consultations with various stakeholders on the financing arrangement. The Oversight Committee of the Residual Special Court has discussed the options for the future financial arrangements at a number of meetings since early 2015. The Registrar of the Court has also engaged with other international courts and tribunals on the subject. The Office of Legal Affairs has had several exchanges with counterparts in the Government of Sierra Leone, and members of the Security Council have also been informed of the options through informal bilateral meetings.

66. In 2015, the Government of Sierra Leone noted that it had become apparent that voluntary contributions were not a sustainable source of funding for the

Residual Special Court. More recently, the Government has expressed its firm support for the option of funding from the United Nations, the co-location of the Court office in The Hague with the International Residual Mechanism for Criminal Tribunals and the provision to the Court of administrative support by the Mechanism. The Government is of the view that funding from the United Nations would provide the financial stability that has eluded the Court since its inception. It is important for the Government that such an arrangement not affect the independent legal character of the Court or its identity.

67. Similarly, the members of the Oversight Committee fully support the option of funding from the United Nations, complemented by the sharing of an administrative platform between the Residual Special Court and the International Residual Mechanism for Criminal Tribunals. The members consider this to be a more sustainable means of financing the Court, given the reality of the persistent shortage of voluntary financial contributions.

68. In September 2015, the Group of African States wrote to the Secretary-General, noting that funding from unpredictable voluntary contributions had resulted in serious financial difficulties that threatened the continued existence of the Residual Special Court. The Group supported the option of funding the Court through assessed contributions, and took the position that other options would not adequately address the dire financial situation it was facing.

69. In his 2009 report to the Security Council on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals (S/2009/258), the Secretary-General stated that there was a possible long-term strategic consideration to bear in mind as regards residual mechanisms. In particular, he noted that, rather than establish a series of stand-alone and potentially costly residual mechanisms, there would be a certain logic, and possible economies of scale to be achieved, in leaving the door open for them to be attached to one common administrative hub at some point in the future. The Advisory Committee on Administrative and Budgetary Questions subsequently suggested the possibility of including the Residual Court in the financing arrangements for the residual mechanism for the International Criminal Tribunals (A/67/648, para. 22). The Office of Legal Affairs will consult with stakeholders on this issue in the coming year.

VIII. Conclusion and recommendations

70. The Residual Special Court has used the commitment authority with much caution. On the basis of current projections and expenditures thus far, the Residual Special Court anticipates that, of the \$2,438,500 commitment authorized for 2016, an amount of \$1,444,400 would be used and reported in the context of the first performance report on the programme budget for the biennium 2016-2017.

71. The Secretariat has explored two alternative options for the future financing arrangements for the Residual Special Court, namely: (a) funding from the Government of Sierra Leone; and (b) funding from the United

Nations and the provision of reimbursable administrative support to the Court by the International Residual Mechanism for Criminal Tribunals.

72. In the light of the response from the Government of Sierra Leone and the bleak outlook as regards voluntary contributions, the alternative financing arrangement that would place the Residual Special Court on a secure financing basis is funding from the United Nations, including the provision of reimbursable administrative support to the Court by the International Residual Mechanism for Criminal Tribunals.

73. Given the lack of adequate and sustained voluntary contributions necessary for the Residual Special Court to fulfil its mandate, the Secretary-General requests the General Assembly to:

(a) Approve a subvention in the amount of \$2,980,500 for the period from 1 January 2017 to 31 December 2017 for the Residual Special Court for Sierra Leone, with the understanding that any voluntary contributions received during the remainder of 2016 and in 2017 would reduce the utilization of the funding provided by the United Nations, which would be reported in the performance reports on the programme budget for biennium 2016-2017;

(b) Appropriate an amount of \$2,980,500 as a subvention to the Residual Special Court for Sierra Leone under section 8, Legal affairs, of the programme budget for 2017.

Annex I

Funds available for the Residual Special Court for Sierra Leone and actual expenditure as at 31 July 2016

A. Income as at 31 July 2016

(United States dollars)

Cash balance brought forward as at 1 January 2016	1 121 100
Contributions received from 1 January 2016 to 31 July 2016	21 700
Contributions anticipated and pledges, August 2016 to December 2016	—
Subvention received	2 438 500
Total	3 581 300

B. Expenditure as at 31 July 2016

(United States dollars)

	Actual disbursement	Obligations	Total
	(a)	(b)	(c) = (a) + (b)
January	126 987	20 000	146 987
February	133 148	20 000	153 148
March	202 985	20 000	222 985
April	232 134	20 000	252 134
May	157 901	37 000	194 901
June	219 729	37 000	256 729
July	161 030	37 000	198 030
August	—	—	—
September	—	—	—
October	—	—	—
November	—	—	—
December	—	—	—
Total	1 233 914	191 000	1 424 914

Annex II

Requirements by object of expenditure: non-judicial and judicial proceedings: 2017

(United States dollars)

<i>Object of expenditure</i>	<i>Non-judicial</i>	<i>Judicial</i>	<i>Total</i>
Posts	940 800	130 600	1 071 400
Common staff costs	380 300	23 000	403 300
Compensation to judges	53 300	129 700	183 000
Consultants and experts	31 500	—	31 500
Travel	122 600	167 500	290 100
Contractual services	541 000	50 000	591 000
General operating expenses	322 600	72 000	394 600
Supplies and materials	10 600	—	10 600
Acquisition of furniture and equipment	5 000	—	5 000
Total	2 407 700	572 800	2 980 500

Annex III

Staffing requirements

A. Post requirements for the Residual Special Court for 2017 on a full-time basis

Location	Professional category and above							National staff			Total
	USG	D-2	P-4	P-3	P-2	P-1	Subtotal	National Officer	Local level	Subtotal	
The Hague	–	1	2	–	2	1	6	–	–	–	6
Freetown	–	–	1	–	–	1	2	3	2	5	7
Total	–	1	3	–	2	2	8	3	2	5	13

Note: In addition to the 13 posts, 1 position funded from general temporary assistance (Local level) would provide additional archiving support.

B. Staffing requirements for the Residual Special Court for 2017 by location and component if required for judicial activity (staff to be drawn from the roster)

Location and component	Professional category and above							National staff			Total
	USG	D-2	P-4	P-3	P-2	P-1	Subtotal	National Officer	Local level	Subtotal	
The Hague											
Judicial	3	–	2	1	–	–	6	–	5	5	11
Non-judicial	2 ^a	–	–	–	–	–	2	–	–	–	2
Total	5	–	2	1	–	–	8	–	5	5	13

^a It is expected that the President and Prosecutor will be required for judicial activity, as necessary.